

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DIEGO FRAUSTO,

Plaintiff,

vs.

IC SYSTEM, INC.,

Defendant.

No. 10 CV 1363

Chicago, Illinois

September 30, 2010

10:43 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Plaintiff:

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For the Defendant:

HINSHAW & CULBERTSON  
By: Peter E. Pederson, Jr.  
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Court reporter:

Blanca I. Lara, CSR, RPR  
219 South Dearborn Street  
Room 2504  
Chicago, Illinois 60604  
(312) 435-5895

1 THE CLERK: 2010 C 1363, Frausto versus IC  
2 Systems.

3 MR. BURKE: Good morning, judge.  
4 Alexander Burke for the plaintiff.

: 43AM

5 MR. PEDERSON: Good morning, Your Honor.  
6 Pete Pederson for the defendant.

: 44AM

7 Your Honor, this is a case alleging claims  
8 under the FDCPA and TCPA. For the most part, the  
9 facts are undisputed and my client, the defendant,  
10 can file a fully dispositive motion for summary  
11 judgment in the next 90 days and we would ask the  
12 Court to exercise its inherent authority over the  
13 docket in this case to establish a briefing schedule  
14 on a summary judgement motion right now.

: 44AM

15 MR. BURKE: Yesterday we filed a motion for  
16 leave to file a second amended complaint adding  
17 class allegations. We don't have any problem with  
18 summary judgment, we'd like to proceed in a class  
19 basis.

: 44AM

20 Judge, we haven't yet noticed --

21 THE COURT: Wait.

22 What's your view on that?

: 44AM

23 MR. PEDERSON: Well, Your Honor has the  
24 discretion to resolve the dispositive motion before  
25 a motion for class certification.

1 THE COURT: I know that. The reason I'm  
2 asking you the question is, there are occasions,  
3 particularly under this Act and similar Acts that  
4 involve relatively small claims, there's sometimes a  
5 significant inclination for tactical reasons on  
6 behalf of the defendant to agree to class action,  
7 particularly if there's a confidence that they're  
8 going to get a favorable ruling. Most of the time,  
9 this is not the position of the defense.

10 MR. PEDERSON: It's not the --

11 THE COURT: I just need to know.

12 MR. PEDERSON: It's not the position of the  
13 defense in this case. We believe it's a waste of  
14 the parties' and the Court's resources to resolve  
15 class certification prior to the merits when the  
16 theory alleged here is straightforward and we can  
17 show straightforward that it does not apply --

18 THE COURT: I got it.

19 The answer is is that, ordinarily, if I have  
20 a serious motion for summary judgment on somebody  
21 who might be a class representative, I usually deal  
22 with the merits of that first because if there is no  
23 case, it's a lousy class rep and the motion is going  
24 go away anyway. If you want to file such a motion,  
25 that's fine with me.

1 MR. BURKE: A motion for class certification?

2 THE COURT: Yeah, that's fine with me, but  
3 I'm not going to make him respond to it until I deal  
4 with summary judgment.

: 4 6AM

5 MR. BURKE: We have no preference as to  
6 whether summary judgment happens before or after  
7 class certification.

: 4 6AM

8 THE COURT: Then what I suggest you do is you  
9 talk to each other and you get an agreed schedule on  
10 summary judgment and if you have any difficulty with  
11 it, you can talk to Mr. walker and he'll give you a  
12 schedule, and then we'll give you a status date  
13 roughly four or five weeks after the summary  
14 judgment motion is fully briefed.

: 4 6AM

15 MR. BURKE: So the motion for leave to amend  
16 to add class allegations?

17 THE COURT: Yes, what you can do is you can  
18 file that motion and I'll deal with it in due  
19 course.

: 4 7AM

20 MR. BURKE: The motion for leave to amend is  
21 filed. I filed it yesterday.

22 THE COURT: That's fine. Then it'll just sit  
23 there until I'm ready.

24 MR. BURKE: Okay.

: 4 7AM

25 MR. PEDERSON: We'll e-mail Mr. walker a

1 proposed order setting a briefing schedule on the  
2 summary judgment motion.

3 THE COURT: That's fine.

4 MR. BURKE: So the motion will sit there --

5 THE COURT: It is entered and continued.

6 MR. BURKE: Very good.

7 THE COURT: Thanks.

8

9 (which concluded the proceedings had on this  
10 date in the above entitled cause.)  
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
MATTER

/s/Blanca I. Lara

date

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Blanca I. Lara

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Date